

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Soo-Hyun KIM et al.
Patent No.: 7,560,265
Issue Date: July 14, 2009
Title: COMPOSITIONS AND METHODS FOR REGULATION
 OF TUMOR NECROSIS FACTOR-ALPHA

**REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(d)**

Mail Stop – Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Office Of Petitions:

After review of the file history and Image File Wrapper (IFW), Patentee hereby submits this Request For Reconsideration for Patent Term Adjustment (PTA) to correct the PTO's PTA calculation of 0 days. The above-referenced patent issued on July 14, 2009, and therefore this application under 37 C.F.R. § 1.705(d) is timely filed within two months of the issue date.

1. Patentee believes they are entitled to **64 days of PTA** under **35 U.S.C. § 154(b)(1)(A/B) and/or 37 CFR 1.702**. Patentee respectfully points out that the examination of the present application was not subject to any **37 CFR 1.702(b)** exclusions including, but not limited to, continuations, interferences, secrecy orders, appeal, or delays requested by the Applicant. This provision provides a one-day extension of patent term for every day that issuance of a patent is delayed due to enumerated prosecution delays by the Office (hereinafter, "prosecution delays"). Patentee's PTA calculation under **35 U.S.C. § 154(b)(1)(A)** is represented Paragraph 6 below.
2. Patentee submits that, in light of recent proceedings regarding *Japan Tobacco Inc.*, Patentee is entitled to consideration of **66 days** of PTA under **35 U.S.C. § 154(b)(1)(B)**, for the Office's failure to issue a patent within three years of its application filing date. During *Japan Tobacco Inc.*, the Patent &

Trademark Office admitted to incorrectly using the 371(c) date as an application filing date from which to calculate a Patent Term Extension instead of:

... the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date ... national stage commenced.

37 CFR 1.702(b) [emphasis added]. When determining if the present application was entitled to a PTA, the Patentee believes that the Office did not take into account the national stage entry date.

3. This Request For Reconsideration could not have been raised in an Application for Patent Term Adjustment under **37 CFR 1.705(b)** and is not untimely because the Office's admission during *Japan Tobacco Inc* was not available before the issue fee payment deadline of the presently issued patent.
4. In particular, Patentee respectfully submits that the Office did not apply the proper standard for determining the period of "B Delay" under **35 U.S.C. § 154(b)(1)(B)**. It is Patentee's understanding that for purposes of calculating "B Delay," the Office measured application pendency as beginning on November 9, 2006, the date on which the application fulfilled the requirements of 35 U.S.C. § 371. Instead, the "B Delay" should have been calculated from three years after the national stage entry filing date (May 8, 2006).
5. Because **Section 154(b)(1)(B)** and **37 CFR 1.702(b)** provide a one-day extension for every day greater than three years after the application filing date that it takes for a patent to issue ("issuance delay") the **§ 154(b)(1)(B)** PTA period includes May 8, 2009 (3 years after national stage entry filing) to July 14, 2009 (actual issue date), thereby encompassing 66 days.
6. The proper patent term adjustment is the sum of "prosecution delays" and "issuance delays," minus any Patentee delay. **MPEP 2731**. Thus, Patentee submits they are entitled to the sum of 0 days of "prosecution delay" and 66 days of "issuance delay," minus 2 days of Patentee delay, for a **total patent term adjustment of 64 days**.

Applicants' PTA calculation is as follows:

Actions Under 35 U.S.C. § 154(b)(1)(A)		Delays		
Initial	Responsive	PTO	App	Over
05/08/2006 Filing Date	01/08/2008 Restriction Requirement	0		
01/08/2008 Restriction Requirement	03/07/2008 Response to Restriction Requirement		0	


03/07/2008 Response to Restriction Requirement	06/13/2008 Non-Final Office Action	0		
06/13/2008 Non-Final Office Action	09/15/2008 Response After Non-Final Action		2	
09/15/2008 Response After Non-Final Action	12/22/2008 Final Rejection	0		
12/23/2008 Final Rejection	02/05/2009 Amendment After Final Rejection		0	
02/05/2009 Amendment After Final Rejection	03/11/2009 Notice of Allowance	0		
06/04/2009 Issue Fee Payment	07/14/2009 Issuance Date	0		
Actions Under 35 U.S.C. § 154(b)(1)(B)		PTO	App	Over
05/8/2009 3 Years from National Stage Entry filing	07/14/2009 Issuance Date	66		
Actions Under 35 U.S.C. § 154(b)(1)(A) and (B)		Delay & Overlap		
Totals	PTO Delays	66		
	Applicant Delays		2	
	Period of Overlap			0
	Patent Term Adjustment	64		

7. The present application is not subject to a terminal disclaimer.
8. Patentee believes that there are no circumstances under which exists a failure to engage in reasonable efforts to conclude processing and/or examination of this application.
9. Applicants hereby request that the Office correct the initial calculation of PTA to reflect 64 days.

The \$200 petition fee prescribed by 37 CFR 1.18(e) is enclosed for this application.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 08-1290.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas C. Howerton', written in a cursive style.

Please send all future correspondence to:

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Date: September 14, 2009